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7 Attorney for JUAN SOTO

8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 OAKLAND DIVISION

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 vs.

14 DAVID CERVANTES, et al.,

15 Defendants.

Case No. 21-CR-00328-YGR

**JUAN SOTO'S NOTICE OF  
OBJECTION TO THE COURT'S  
ORDER (Doc 1685) ON THE  
STIPULATION FOR RELEASE OF  
SEALED SOTO RELATED  
DOCUMENTS ENTERED WITHOUT  
NOTICE OR OPPORTUNITY FOR  
THE SOTO DEFENSE TO BE HEARD**

**Dept.: The Honorable Yvonne  
Gonzalez-Rogers, District Judge**

20 **TO: THIS HONORABLE COURT, AND TO THE GOVERNMENT:**

21 JUAN SOTO, through his counsel, objects to the Court's Order (Doc 1685)  
22 granting a stipulation for Cervantes trial group lawyers to obtain documents filed under  
23 seal related to Juan Soto—which may include (since there was no notice to Soto counsel  
24 of exactly what documents are involved, this is speculation) declarations of persons  
25 including Juan Soto whose statements were specifically stated to be reserved for hearings  
26 to be conducted *in camera* and under seal. In issuing its November 18, 2024 ruling, the  
27 Court has denied Mr. Soto Due Process, and undermined the Court's Local Rules related  
28 to under seal filings.

1  
2 **I. STATEMENT OF THE OBJECTIONS AND INTRODUCTION.**

3       Undersigned counsel for Juan Soto was contacted by email on November 12, 2024  
4 by AUSA Leif Dautch while the undersigned was in the Eastern District of New York  
5 working on another matter. Undersigned was notified that the Court had heard some post-  
6 Cervantes Trial Group motions and was inclined to provide the Cervantes Trial Group  
7 lawyers access to some of the pleadings and supporting exhibits filed under seal pursuant  
8 to the Court's Criminal Local Rules both by the Government and the Juan Soto defense.  
9 AUSA Dautch and undersigned Soto counsel discussed the issues by phone briefly, and  
10 Mr. Dautch asked the undersigned what his views were—and whether the undersigned  
11 would have objections to the disclosing of Soto documents. Mr. Dautch indicated that the  
12 Court appeared to be leaning in favor of releasing some documents but had wanted  
13 Government counsel to try to reach the undersigned. The undersigned was provided no  
14 pleadings filed by the Cervantes trial group, or pleadings filed related to the Government's  
15 position on the matter. No list of pleadings or exhibits sought to be released was provided  
16 to, or discussed with undersigned counsel.

17       The undersigned was aware that the documents at issue could include some  
18 Government investigation reports. But those documents filed by Juan Soto were principally  
19 documents acquired during the Soto defense's investigation, and included materials  
20 prepared specifically for Soto-specific litigation before the Court. Undersigned Soto  
21 counsel made this point to Mr. Dautch and stated that the Soto defense would not agree to  
22 this process and would object to the release of its filings regardless of the proposed AEO  
23 designation of the released material.

24       Undersigned counsel was also aware that the Soto litigation was largely conducted  
25 by the Court *in camera* and under seal at the request of both the Soto defense and  
26 Government—with this Court's approval. The main reason for conducting the litigation  
27 out of the co-defendants' and public's sight and hearing was the combination of  
28 acknowledged risk of harm to Mr. Soto and to his family, as well as to preserve certain  
privileges that Mr. Soto had not yet waived (in regard to his declaration), and that neither

1 he nor his lawyer—nor counsel for the Government had waived either.

2 On November 12, 2024, undersigned stated to Mr. Dautch that he understood that  
3 defense counsel for the Cervantes group needed to do what they could to defend their  
4 clients. But the undersigned noted that Mr. Soto abruptly decided to terminate pretrial  
5 litigation on a pending motion to dismiss and forgo a trial because Mr. Soto and his wife  
6 had been publicly identified during the Cervantes et al trial as having communicated with  
7 CDCR investigators. Mr. Soto was afraid for his family's safety as well as his own. Counsel  
8 for the Government were aware of Mr. Soto's concerns. The undersigned explained that  
9 the Soto defense would not agree to the release of any of the Juan Soto filings, or the  
10 Governments filings in so far as they referenced information made available by the Soto  
11 defense. The undersigned had in mind that at least one of the exhibits filed by the Soto  
12 defense contained statements of concern from an individual about the publication of his  
13 declaration *to anyone* other than the Court and counsel for the Government—individuals  
14 that the declarant was told by undersigned counsel would respect the confidentiality of the  
15 information.

16 AUSA Dautch and the undersigned discussed some of the reasoning for the  
17 objections, which included both security concerns and assertions of certain privileges. The  
18 undersigned was told that the matter would be further discussed with the Court on  
19 November 14<sup>th</sup>. When the undersigned heard nothing further from Mr. Dautch after  
20 returning from New York, and while still engaged in other matter, undersigned Soto  
21 counsel sent an e-mail to Mr. Dautch on November 16<sup>th</sup>, asking what happened at the  
22 hearing. Undersigned Soto counsel was in a hotel room preparing for capital case  
23 proceedings on November 18<sup>th</sup>, 2024, when he was notified by Mr. Dautch that the Court  
24 was entertaining a stipulation covering most of the sealed documents filed in the Soto case.  
25 The undersigned saw the stipulation and Order embodied in Document 1685 *the day both*  
26 *were signed and filed* after the undersigned Soto counsel concluded proceedings in another  
27 matter.

28 Undersigned Soto counsel did not know until November 18<sup>th</sup> that the scope of the  
agreement that the Government apparently reached with Cervantes trial group counsel with

1 the Court’s blessing would authorize the release of 18 pleadings and exhibits related to 18  
2 docket entries in the Soto case. The docket entries involved relate to sealed filings – filings  
3 that this Court *ordered* to be filed under seal for good cause under the provisions of the  
4 Court’s Criminal Local Rules.

5 **The Juan Soto defense objects to the process and the resulting Order (Doc**  
6 **1685) for the following reasons:**

7 1. The following docket entries that were the subject of Rule-based Motions to  
8 Seal granted by this Court, are being released to defense counsel for the Cervantes group  
9 on an AEO basis—which does not limit communication between counsel and client about  
10 the content of the documents and materials. The docket entries in question, hereafter  
11 referred to as “the docket entries,” are numbers: 306, 315, 319, 326, 340, 408, 456, 510,  
12 754, 791, 909, 918, 1228, 1278, 1319, 1333, 1657, 1659. Some of the documents included  
13 in the docket entries at issue were declarations, one of which specifically indicated that the  
14 signatory had not yet decided whether he was prepared to testify in public to the matters  
15 covered in the declaration, and further indicates that the declarant was assured that his  
16 statements were remain under seal for the time being. Those statements are now in the  
17 hands of lawyers who, pursuant to their job descriptions, will communicate with their  
18 clients to the degree they feel is necessary to further the litigation of the case. At some  
19 point, it is likely that counsel will request leave to file some of the Soto documents that  
20 they have received pursuant to the stipulation. The Court’s Order (Doc 1685) was entered  
21 without any apparent regard for the Due Process rights of Juan Soto in so far as his interest  
22 in maintaining documents under seal is concerned.

23 2. The Soto defense did not receive notice from the Cervantes Trial Group or  
24 the Government, or the Court, of the specific litigation and discussion that led to the Court’s  
25 November 18, 2024 Order. What ‘notice’ the undersigned counsel received was a  
26 November 12, 2024 e-mail (that the undersigned read between jail visits and other work in  
27 New York) that read that the Cervantes Trial Group “...has requested an Attorneys-Eyes-  
28 Only production of various sealed filings from Juan Soto’s case...” with an offer of further  
discussion of the issue. Specifics were not available.

1 The issue was discussed by undersigned counsel by phone (from New York), with  
 2 AUSA Leif Dautch – a phone call during which the undersigned explained that he had  
 3 objections concerning disclosure of Mr. Soto’s filings. Undersigned counsel followed that  
 4 with an e-mailed question to Mr. Dautch on November 16, 2024, asking what happened at  
 5 the hearing at which the issue of the ‘various Soto filings’ was to be discussed. That was  
 6 then followed by a copy of the November 18, 2024 Stipulation, sent while undersigned  
 7 Soto counsel was in court in San Joaquin County. The Order was filed the *same day* as the  
 8 stipulation was tendered to the undersigned. These developments violate Mr. Soto’s due  
 9 process rights; deprive Mr. Soto and his counsel of adequate notice of efforts to unseal  
 10 otherwise sealed pleadings; place undersigned counsel in the position of having  
 11 misinformed and misadvised Mr. Soto on the likelihood that the unsealing of documents  
 12 pertinent to Mr. Soto and his wife, and of statements the publication of which Mr. Soto had  
 13 clearly indicated he had not yet consented to.;

14 3. Finally, permitting parties in a criminal case to agree to circumvent sealing  
 15 orders sought by a former co-defendant given the existence of Rules that address sealing  
 16 related proceedings without the need for notice, personal presence, participation through  
 17 counsel, is likely to create a set of unintended consequences in other cases going forward.  
 18 The procedure that this Court has agreed to employ in this case can now, presumably, be  
 19 used as the basis for arguments that agreements can be reached to undermine the sealing  
 20 of document process by side stepping the need for the interested parties to be involved.

## 21 **II. DISCUSSION.**

22 Regrettably, the argument that follows will not have benefitted from the kind of  
 23 preparation and research that this Court should expect from lawyers representing persons  
 24 in criminal cases in this District. Because undersigned counsel received information about  
 25 developments in this case on the fly, and is now responding to those developments also on  
 26 the fly, the following briefing is admittedly cursory. But it at least provides the Court and  
 27 parties of notice of the objection(s) and an opportunity to respond—more than the Soto  
 28 defense was given on the issues presented .

1 The immediate history of proceedings in the above-captioned case, especially  
2 insofar as Juan Soto and his counsel are concerned, are both regrettable and, to the  
3 undersigned's knowledge, unprecedented. The undersigned does not quibble with the need  
4 for a Court to accommodate significant post-conviction litigation in a case in which the  
5 persons convicted of significant crimes are facing onerous sentences. Undersigned Soto  
6 counsel understands that the Cervantes Trial Group defenses are concerned about the  
7 integrity of the investigation, as well as whether the Government discharged its *Brady*  
8 obligations. It appears that a number of the issues of concern to the Cervantes trial group  
9 are those that were addressed, generally, by the U.S. Supreme Court in *Kyles v. Whitley*,  
10 514 U.S. 419, 428-434 (1995).

11 That said, it has been pointed out that the 'core of due process' is the right to notice  
12 and a meaningful opportunity to be heard. *Cleveland Board of Education v. Loudermill*,  
13 470 U.S. 532, 542 (1985). The fact is that in *Brady* litigation, the existing case law  
14 contemplates that where there are competing interests, and legitimate concerns to be heard  
15 and addressed, a court usually hears the concerns of those involved before issuing an  
16 order—and the order here is *not* a discovery order. It is an order that approves of an  
17 agreement reached between what, from Mr. Soto's viewpoint, are third parties addressing  
18 his interests in maintaining under seal certain files and records that he filed under seal.

19 And even if this stipulation is dignified as being a variation on a discovery  
20 proceeding, it did not provide Mr. Soto any opportunity to be heard. In *Pennsylvania v.*  
21 *Ritchie*, 480 U.S. 39, 60-61 (1987), the Supreme Court commented that discovery  
22 proceedings involving potentially impeaching materials must take into consideration the  
23 rights of the accused(s) as well as the rights of other interested parties—in that instance,  
24 the victims.

25 On occasion, post-conviction motions to unseal documents are made because of  
26 what is characterized to be intense public interest in aspects of the proceedings. Where the  
27 media professes an interest in court filings, courts have also discussed how competing  
28 interests should be addressed. But they have not decided that the individual whose  
otherwise confidential records are being sought has no place in the proceedings. *See, for*

1 *example*, the discussion of the various interests and procedures to access a psychiatric  
2 report in *U.S. v. Kaczynski*, 154 F.3d, 930, 931-32 (9<sup>th</sup> Cir., 1998). The case just cited was  
3 known as the ‘Unabomber Case.’ And while some of his records were disclosed over his  
4 objection, Mr. Kaczynski got the opportunity to object to that release, and some of his files  
5 and records were not released.

6 When the accused seeks to have the Court order certain information that is part of  
7 the Government’s investigation unsealed – for example, the identity of an informant and  
8 contents of his communications within the meaning of *Roviaro v. United States*, 353 U.S.  
9 53 (1957), the process, if the Government refuses to voluntarily disclose the information,  
10 involves an orderly litigation characterized by notice and the opportunity to respond.

11 The Court’s Rule (Criminal Local Rule) 56-1 discusses the filing of material under  
12 seal in criminal cases and the procedure for moving to seal that material. The Rule also  
13 discusses, in subparagraph (e)(3), that: “Parties or non-parties may, at any time, file a  
14 motion requesting that the Court unseal sealed material.” The Rule does not exempt  
15 parties, or the Court, from following a conventional process of requiring service of a  
16 motion on the individual whose pleadings and materials are sought to be unsealed, and  
17 providing the opportunity to respond.

18 Undersigned counsel is aware of the irony of his being placed in the position of  
19 having to make these objections, particularly because the undersigned is representing an  
20 accused who has been identified as serving as a source. The undersigned chose years ago  
21 not to represent individuals who cooperate with the Government. The undersigned took on  
22 Mr. Soto’s case based on what the FPD office characterized as a request from the Court  
23 given that so many other counsel had conflicts in the matter—as well as because Mr. Soto  
24 was described as a person who was not under a cooperation agreement, and was having  
25 trouble with his assigned counsel. The history of Mr. Soto’s case has been instructive for  
26 the undersigned, because it is clear that he has been viewed as an expendable commodity  
27 by various stakeholders in the investigation and litigation of this case. Regardless of who  
28 or what Mr. Soto’s past is, he is entitled to be treated fairly. It should be apparent to the  
Court and to the parties that while their focus may be on trying to clean up the debris from



1 a long trial that may have been characterized by less than optimal discovery practices, it  
2 makes no sense to agree to a process the undermines procedures that allows parties to seal  
3 documents, and that essentially ignores the interests an accused who was trying to defend  
4 himself against criminal charges until it became too risky, in his view, to continue that  
5 defense.

6 Undersigned defense counsel cautions that the defense lawyers for the Cervantes  
7 trial group might want to be a little careful about avoiding providing notice and the  
8 opportunity to be heard to a current or former co-defendant whose pleadings they wish to  
9 get unsealed in a case lest they find that their motions to seal pleadings may prove to be as  
10 fragile and illusory as Mr. Soto's may be deemed in this case. If the Court's Order is  
11 allowed to stand without further scrutiny, there are any number of ways that the process  
12 used here could be characterized and abused in other litigations going forward.

13 A cross-country singular email communication followed by a phone call and a copy  
14 of a stipulation filed just before the Court accepts the stipulation and orders a former  
15 defendant's sealed pleadings to be unsealed cannot be viewed as a process adequate to the  
16 full and fair resolution of the matters presented. The fact that the proposed recipients of  
17 disclosures are counsel does not address the deficiencies in the procedures and process.

### 18 **III. CONCLUSION.**

19 For the reasons stated here, Juan Soto, and his lawyer, object to the dissemination  
20 of sealed information following a process that, from the Soto viewpoint, cannot be  
21 viewed as compliant with due process, or with a defensible procedure. While at this  
22 point, the harm may have been done to some extent, the Court should address the  
23 objections made here—and the Marshal should be instructed to inform CDCR that there  
24 has now been a dissemination of Juan and Elissa Soto information that may pose serious  
25 issues for both of them.

26 //

27 //



1 -DATED: November 19, 2024

Respectfully Submitted,

JOHN T. PHILIPSBORN

4 //s// John T. Philipsborn

JOHN T. PHILIPSBORN

*Attorney for Attorney for JUAN SOTO*